IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN NOTICE OF MOTION NO. 3631 OF 2005

IN

SUIT NO.3162 OF 2005

Nina Anil Shah ...Plaintiff

V/s.

M/s.Chitralakeha Builders & Ors. ...Defendant.

Mr.S.M.Sakharkar i/b.E.K.Sasidharan for the plaintiff.
Mr.N.G.Thakkar, Sr.Counsel i/b.Mr. L.H.Rambhia for defendant no.3 .
Mr.M.P.S.Rao i/b.Dr.Mrs. R.R.Ajinkya for defendant nos. 1 and 2. .

CORAM : S.J. VAZIFDAR J.

DATE : 30TH JULY, 2007.

P.C. :-

1. No reliefs on this Notice of Motion can be granted. The suit is filed intera-alia for dissolution and accounts of the first defendant firm and for a declaration that certain consent terms in respect whereof orders were passed in Suit No.1335 of 1998 are not binding on the suit property.

2. The plaintiff herself invoked clause 14 of the partnership deed which pertains to Arbitration. All the

disputes and differences between the partners of defendant no.1 namely the plaintiff and defendant no. 2 were referred to a sole arbitrator.

3. During the pendency of the arbitration proceedings the plaintiff filed Arbitration Petition No.538 of 2004 under section 9 of the Arbitration and Conciliation Act, 1996 inter-alia for appointment of a Receiver in respect of the same property in respect whereof a Receiver and other interim reliefs are sought in the present Notice of Motion. The Arbitration Petition was dismissed by an order and Judgment dated 24th January, 2005. The plaintiffs appeal bearing Appeal No. 422 of 2005 was dismissed by an order dated 19th August, 2005. The Division Bench upheld the order of the learned Single Judge not only on the ground on which the learned Single Judge dismissed the Arbitration Petition, but on several other grounds as well.

4. Thereafter, an award was passed by the learned arbitrator on 28th July, 2006.

. It is important to note that the learned arbitrator came to the conclusion that the suit property never constituted an asset of the firm.

5. The plaintiff challenged the said award by filing an Arbitration Petition No. 369 of 2006. By an order and Judgment dated 3rd October, 2006 the Arbitration Petition was dismissed.

6(A). The plaintiff filed an appeal being Appeal No. 813 of 2006 against the said order and Judgment. By an order dated 29th January, 2007 the appeal was admitted. However, interim relief was granted subject to certain conditions which admittedly the plaintiff has not fulfilled.

(B) Against this order the plaintiff filed a petition for special leave to appeal to the Supreme Court. Mr. Sakharkar fairly states that the S.L.P. was dismissed though he does not have a copy of the order in Court.

7. Mr.Sakharkar stated that the plaintiff has adopted proceedings for modification of the order dated 29th January, 2007. Be that as it may, I am bound by the aforesaid orders. Further and more important is the fact that the learned arbitrator has come to the conclusion that the suit property does not constitute a part of the partnership assets. The award as on date has been held to be valid and has not been set aside.

8. In the circumstances, the Notice of Motion is dismissed.

9. In view of this order there is now no impediant to the Court Receiver handing over possession to the concerned parties as per the consent terms arrived at in Suit No. 1335 of 1988.